



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 01319524

Date: DEC. 3, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a long-term care skilled nursing facility, seeks to employ the Beneficiary as a mechanical engineer, or assistant director of plant.¹ It requests classification of the Beneficiary as an advanced degree professional under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on multiple grounds. The Director determined that the Petitioner did not establish that the Beneficiary met the educational and experience requirements of the labor certification. The Director also found that the Beneficiary willfully misrepresented a material fact concerning his educational credentials on the labor certification.

On appeal the Petitioner asserts that the Beneficiary meets the minimum educational requirement of the labor certification and that there was no basis to find that the Beneficiary willfully misrepresented any material fact on the labor certification. The AAO reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). It is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

Upon *de novo* review, we will dismiss the appeal on the grounds that the record does not establish that the Beneficiary meets the educational or the experience requirements of the labor certification. We will withdraw the Director's finding that the Beneficiary willfully misrepresented a material fact on the labor certification.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). See section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies

¹ The petition identifies the job as a mechanical engineer, while the underlying labor certification identifies it as an assistant director of plant. The job duties are described the same in both documents.

that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

For the purpose of classification as an advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as:

[a]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree

A petition for an advanced degree professional must generally be accompanied by a valid, individual labor certification. 8 C.F.R. § 204.5(k)(4)(1). A beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition’s priority date.² *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

II. ANALYSIS

The first issue on appeal is whether the Beneficiary has the requisite educational degree and the requisite experience to qualify for the proffered position under the terms of the labor certification and to qualify him for classification as an advanced degree professional. For the reasons discussed herein, we conclude that he does not. The second issue on appeal is whether the Beneficiary willfully misrepresented a material fact about his education in the labor certification. For the reasons discussed herein, we conclude that he did not.

A. Requirements of the Labor Certification

Part H of the labor certification states the following with respect to the minimum requirements of the proffered position:

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| 4. | Education: Minimum level required: | Master’s degree |
| 4-B. | Major Field of Study: | Engineering |
| 5. | Is training required in the job opportunity? | No |
| 6. | Is experience in the job offered required? | Yes |
| 6-A. | How long? | 24 months |
| 7. | Is an alternate field of study acceptable? | No |

² The priority date of an employment-based immigrant petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). The priority date in this case was December 16, 2010

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| 8. | Is an alternate combination of education and experience acceptable? | No |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | No |
| 14. | Specific skills and other requirements: | None |

Thus, the labor certification requires a master's degree in engineering, or a foreign educational equivalent, and 24 months of experience in the job offered. It does not allow for a master's degree in any other field of study, or for experience in positions other than the job offered. Nor does the labor certification allow for an alternate combination of education and experience, such as a bachelor's degree and five years of post-baccalaureate experience, to qualify for classification as an advanced degree professional.

Sections J and K of the labor certification assert that the Beneficiary met the educational and experience qualifications stated in section H by virtue of a master's degree in mechanical engineering from [redacted] College in [redacted] California, completed in 2006, and a job as senior engineer manager at [redacted] in [redacted] Florida, from January 2005 to September 2010.

1. The Beneficiary's Education

The record includes copies of a diploma and transcript from [redacted] University in the Philippines showing that the Beneficiary was awarded a bachelor of science in industrial education in March 1982. The record also includes an evaluation of this Philippine credential from Josef Silny & Associates, Inc. which states that it was a four-year degree program equivalent to a bachelor's degree from a U.S. college or university. In addition, the record includes a copy of a one-page document from [redacted] University, Student Records Division, in [redacted] Idaho, addressed to the Beneficiary, listing 11 courses completed and passed, and stating that a master of science degree in mechanical engineering was conferred on July 25, 2006. The Petitioner indicates that this degree was earned in a distance learning program.

In denying the petition the Director first noted that [redacted] University, where the Beneficiary allegedly earned his master's degree, lacks accreditation from any accrediting organization that is recognized by the U.S. Department of Education (DOE) or the Council for Higher Education Accreditation (CHEA). The Director also noted that the labor certification identified the institution where the Beneficiary earned his master's degree as [redacted] College in [redacted] California, not [redacted] University in [redacted] Idaho. Due to the discrepancy between the labor certification and the [redacted] University document regarding the identity of the Beneficiary's master's degree institution, and [redacted] University's lack of accreditation by a DOE- or CHEA-recognized accrediting organization, the Director concluded that the Petitioner did not establish that the Beneficiary met the labor certification's minimum educational requirement and that the Beneficiary's claim to have a master's degree was a willful misrepresentation of his educational credentials on the labor certification.

On appeal the Petitioner asserts that USCIS has no statutory or regulatory authority, nor any supporting case law or policy memoranda, to require the Beneficiary's master's degree to come from an institution accredited by a DOE- or CHEA-recognized accrediting organization.³ The Petitioner points out that

³ The Petitioner also asserts that the Beneficiary's postgraduate institution was misidentified in the labor certification by prior counsel as [redacted] College in [redacted] California, and that [redacted] University in [redacted] Idaho, was the actual institution the Beneficiary attended for his master's degree program.

the regulations applying to “EB-1” employment-based petitions for outstanding professors and researchers, as well as to “H-1B” nonimmigrant petitions for specialty workers, require academic degrees from accredited institutions, and that a USCIS policy memorandum applying to “EB-2” petitions for medical doctors requires that medical degrees come from accredited universities. The absence of any specific requirement for other EB-2 petitions, the Petitioner claims, means that for the proffered position in this case an advanced degree need not come from an accredited institution. We do not agree.

In the United States the DOE plays a central oversight role in the accreditation of institutions and programs of higher education. As explained on its website, the DOE is required by law to publish a list of nationally recognized accrediting organizations which the Secretary of Education determines to be reliable authorities regarding the quality of education or training provided by the U.S. institutions and programs they accredit. www2.ed.gov/admins/finaid/accred/accreditation.html#Overview (last visited August 9, 2021). Accrediting organizations are private educational associations that develop evaluation criteria reflecting the qualities of a sound educational program, and they conduct evaluations to assess whether institutions meet those criteria. *Id.* As summarized by the DOE: “The goal of accreditation is to ensure that institutions of higher education meet acceptable levels of quality.” *Id.*

The CHEA, a national association of degree-granting colleges and universities, plays a similar oversight role, describing itself on its website as “[a] national advocate and institutional voice for academic quality through accreditation.” www.chea.org/about-chea (last visited August 9, 2021). Like the DOE, CHEA recognizes accrediting organizations that review and accredit individual institutions and their programs. As stated on its website, the value of an institution’s accreditation by a CHEA-approved national accrediting organization is that it (1) assures that a neutral party has reviewed the quality of education provided by the institution or program, (2) provides access to federal financial aid, and (3) signals to prospective employers that an educational program meets widely accepted educational standards. *Id.*

Some accrediting organizations and their accredited institutions appear in both the DOE and CHEA databases, while others appear in one but not the other. chea.org/chea-and-usde-recognized-accrediting-organizations (last visited August 10, 2021). DOE and CHEA both recognize the Northwest Commission on Colleges and Universities (NWCCU) as an authorized regional organization for the accreditation of postsecondary institutions in Idaho and other northwestern states. *Id.* [REDACTED] University is not listed in the NWCCU’s directory of accredited institutions. nwccu.org/member-institutions/directory/ (last visited August 10, 2021). According to a 2012 printout from [REDACTED] University’s website, previously submitted by the Petitioner, the university was accredited by three organizations – the Committee for Distance Education Accreditation (CDEA), the Association for Online Academic Excellence (AOAEX), and the Interfaith Education Ministries (IEM). None of these organizations is recognized by DOE or CHEA, and the Petitioner has submitted no independent evidence of their reputability. Thus, the Petitioner has not established that [REDACTED] University is now, or ever was, accredited by any DOE- or CHEA-recognized accrediting organization.

Since there is no evidence that [REDACTED] University has ever been accredited by a national accrediting organization recognized by either the DOE or CHEA, degrees issued by that institution lack the basic

assurance that they represent an acceptable standard of educational quality. As the Beneficiary's educational credential from [] University does not come from an institution of higher education accredited by a DOE- or CHEA-approved accrediting organization, we conclude that it does not qualify the Beneficiary for classification as an advanced degree professional under the Act. For this reason alone the petition cannot be approved.

2. The Beneficiary's Experience

As previously noted, the labor certification requires two years of experience in the job offered, the duties of which are described in box H.11 as follows:

Develop comprehensive electrical and electro-mechanical preventative maintenance program. Schedule and maintain compliance with ICMCF accreditation; state inspection, fire marshal, VA, and county inspectors. Conduct in-service general maintenance activities and energy management program.

According to the labor certification the Beneficiary was employed as a "senior engineer manager" by [] in Florida from January 2005 to September 2010, performing the exact duties required for the proffered position. This is the only job listed for the Beneficiary in the labor certification. However, no letter has been submitted from [] to verify the Beneficiary's employment. Instead, the Petitioner has submitted photocopied letters from three other organizations claiming to have employed the Beneficiary in the Philippines between 1975 and 1989. They include:

- [] College of Arts and Trades (the forerunner of [] University), which claims that it employed the Beneficiary as a part-time maintenance electrician and motor rewinder from May 1975 to August 1977;
- [] University, which claims to have employed the Beneficiary as an instructor from October 1978 to June 1985, during which time he also performed tasks in the school's electrical and electro-mechanical research and maintenance section; and
- [], which claims to have employed the Beneficiary as an HVAC mechanical engineer from September 1985 to November 1986 and as an assistant project manager engineer from November 1986 to December 1989.

The Petitioner has not explained why no employment verification letter was submitted from [] the only organization listed on the labor certification as a former employer of the Beneficiary. Nor has the Petitioner explained why the three organizations from whom employment verification letters have been submitted were not listed on the labor certification as former employers of the Beneficiary. Failure to list former employers on the labor certification tends to lessen the credibility of the claimed employment. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976). The Director found that the Petitioner did not adequately explain how the Beneficiary could have been working for [] University as an instructor before completing his education at that institution, and that the record overall lacked sufficient evidence of the Beneficiary's alleged experience.

On appeal the Petitioner does not address the issue of the Beneficiary's experience. Therefore, we consider the issue of whether the Beneficiary met the minimum experience requirements for the proffered job to be abandoned or waived on appeal.⁴

The regulation at 8 C.F.R. § 204.5(g)(1) states the initial evidentiary requirements for employment experience, as follows:

Evidence relating to qualifying experience . . . shall be in the form of letter(s) from current or former employer(s) . . . and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien . . .

Neither the letter from [] College of Arts and Trades, asserting that the Beneficiary was a part-time employee from 1975 to 1977, nor the letter from [] asserting that the Beneficiary was an employee from 1985 to 1989, meets the substantive requirements of 8 C.F.R. § 204.5(g)(1) because they do not provide specific descriptions of the duties performed. The first letter states simply that the Beneficiary "held the position of maintenance electrician and motor rewinder" with no description of the job duties, while the second letter identifies the Beneficiary's job titles but provides only a superficial description of his duties as "taking charge of analysis, design and maintenance of the [] Facility air conditioning and refrigeration systems maintenance." Moreover, neither letter indicates that the Beneficiary performed the duties of the job offered in this proceeding, which is the only type of work that meets the experience requirement of the labor certification. As for the letters from [] University, they assert that the Beneficiary was employed as an instructor while studying in the years 1978-1985, and was also "in charge of" the planning, installation, maintenance, operation, and repair of the electrical and electromechanical research and maintenance section. The university does not allege that the Beneficiary was a full-time employee and has not explained how the Beneficiary could perform these tasks in the electromechanical research and maintenance section while also taking courses and working as an instructor. Finally, the job duties allegedly performed by the Beneficiary at [] University do not accord with the job duties of the proffered position in this proceeding, which is the only type of work that meets the experience requirement of the labor certification.

Thus, the evidence of record does not establish that the Beneficiary has two years of qualifying experience in the job offered, as required by the labor certification. For this additional reason the petition cannot be approved.

B. Willful Misrepresentation of a Material Fact

The Director's finding that the Beneficiary willfully misrepresented a material fact concerning his educational credentials in the labor certification appears to be based on (1) the incorrect identification of [] College in [] California, rather than [] University in [] Idaho, as the institution that issued the Beneficiary's master of science in mechanical engineering, and (2) the claim that the educational credential from an unaccredited university was a *bona fide* master's degree.

⁴ See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (when a respondent fails to substantially appeal an issue addressed in a decision, that issue is waived on appeal); see also *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (generally finding that a waived ground of ineligibility may form the sole basis for a dismissed appeal); *Matter of Zhang*, 27 I&N Dec. 569 n.2 (BIA 2019) (finding that an issue not appealed is deemed as abandoned).

On appeal the Petitioner asserts that the misidentification of the school on the labor certification was a mistake by the Beneficiary's prior attorney which was overlooked by the Beneficiary and not intended to deceive USCIS officials regarding the institution which issued the Beneficiary's master of science degree, especially since the supporting evidence confirmed what institution issued the degree. We also note that the Director's determination regarding the non-accredited status of [redacted] University does not mean perforce that the Beneficiary willfully misrepresented his educational credentials by claiming in the labor certification to have earned a master's degree. Based on the record as a whole, and the lack of compelling evidence that the Beneficiary willfully misrepresented his educational credentials in the labor certification, we will withdraw the Director's finding on this issue.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the requisite educational degree under the terms of the labor certification to qualify for classification as an advanced degree professional. Nor has the Petitioner established that the Beneficiary meets the experience requirement of the labor certification. Therefore, we will dismiss the appeal. We will withdraw the Director's finding that the Beneficiary willfully misrepresented a material fact in the labor certification.

ORDER: The appeal is dismissed.